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§ 1952.233 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for a “fully effective” enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

§ 1952.234 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the “fully effective” compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Kentucky State plan for a period of at least one year following certification of completion of developmental steps (45 FR 8596). Based on the 18(e) Effectiveness Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Kentucky’s occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Kentucky plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 13, 1985.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and

all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities; military bases; properties ceded to the U.S. Government; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Kentucky is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 24896, June 13, 1985, as amended at 62 FR 2562, Jan. 17, 1997; 65 FR 36624, June 9, 2000]

§ 1952.235 Level of Federal enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval to the Kentucky plan under section 18(e) of the Act, effective June 13, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered

under the Kentucky plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(b) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Kentucky plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments; employment at Tennessee Valley Authority facilities and on all military bases, as well as any other properties ceded to the U.S. Government. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142,

in agriculture, as described in § 1952.234(b). Federal jurisdiction is also retained with respect to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the finally approved plan, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability, Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Kentucky State

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program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[50 FR 24896, June 13, 1985, as amended at 62 FR 2562, Jan. 17, 1997; 65 FR 36624, June 9, 2000]

§ 1952.236 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T50, Atlanta, Georgia 30303; and

Office of the Secretary, Kentucky Labor Cabinet, 1047 U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

[65 FR 36625, June 9, 2000]

§ 1952.237 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Kentucky's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *The Voluntary Protection Program.* On October 24, 1996, the Assistant Secretary approved Kentucky's plan supplement, which is generally identical to the Federal Voluntary Protection Program, with the exception that the State's VPP is limited to the "Star" level participation for general industry firms.

(c) *Temporary labor camps/field sanitation.* Effective February 3, 1997, the Assistant Secretary approved Kentucky's plan amendment, dated July 29, 1996, relinquishing coverage for the issues of

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field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Kentucky pursuant to Secretary of Labor's Order 5–96, dated December 27, 1996.

[59 FR 14556, Mar. 29, 1994, as amended at 61 FR 55099, Oct. 24, 1996; 62 FR 2563, Jan. 17, 1997]

Subpart R—Alaska

§ 1952.240 Description of the plan as initially approved.

(a) The Department of Labor is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in §1902.2(c)(1) of this chapter under four major codes for general safety, industrial housing, electrical hazards, and occupational health and environmental controls. The plan also includes vertical special industry codes for construction, wood products, petroleum, and fishing. Appendix G of the plan contains a time-table for adoption of the standards beginning with the effective date of the grant approved under section 23(g) of the Act. The timetable requires from 6 to 36 months for completion of the standard-setting process with most of the standards to be adopted within 6 months of the effective date of the grant.

(b)(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor amending chapter 18 of the Alaska Statutes. Under the legislation, effective July 24, 1973, the Department of Labor has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exceptions of maritime workers in the area